S.B. Civil Writ Petition NO.2269/2005
Manohar Lal
vs
Geeta Devi

DATE OF ORDER : - 19.4.2005.

HON'BLE MR. PRAKASH TATIA,J.

Mr.HS Sidhu, for the petitioner.

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Heard learned counsel for the petitioner.

The facts in brief are that the petitioner submitted a divorce petition before the court of District Judge, Hanumangarh, which was allowed and decree for divorce was passed by the trial court vide judgment and decree dated 2.1.2004. The non-petitioner wife of the petitioner submitted an application for setting aside the ex-parte decree by stating that the report on the process sent by the post has been obtained by the non-petitioner's husband with the collusion of the postman. She also submitted that a summon was also sent to the non-petitioner's residence wherein the court process server reported that the non-petitioner was not available at home. According to non-petitioner at relevant time, she was not living at the address given as she went to live with her relation. The application is supported by the affidavit of the non-petitioner. The notice was sent to the petitioner for application for setting aside ex-parte decree, though, initially the

petitioner put in appearance through his advocate, but on 27.1.2005, no one appeared for the petitioner before the trial court, therefore, the trial court set aside the ex-parte decree vide order dated 27.1.2005.

Learned counsel for the petitioner submits that the ex-parte decree was set aside without assigning any reason and according to learned counsel for the petitioner, when summon was sent to the non-petitioner by registered post there is an endorsement of refusal then in view of the Hon'ble Supreme Court judgment delivered in the case of Municipal Council, Mandasaur Vs. Fakirchand & Anr reported in 1997 DNJ (SC) 157, the trial court was right in passing the ex-parte decree by accepting the service of the non-petitioner complete and in accordance with law.

I considered the submissions of learned counsel for the petitioner. It will be worthwhile to mention here that the non-petitioner wife of the petitioner in her application for setting aside of the ex-parte decree clearly said that summons were sent one by registered post and another through court process server. According to non-petitioner, the report of refusal obtained on registered post is a result of the connivance of non-petitioner's husband with the postman, which can be found proved from the report of the process server of the court itself, which reported that non-petitioner was not available at her

residence. It will be further relevant to mention here that when the petitioner himself did not appear before the trial court to oppose the application then there is no reason for petitioner to challenge the order for which he never objected before the trial court by presenting himself on the day when the application was considered. Otherwise also, this Court is not inclined to interfere in such a matter where the matrimonial relation of both the parties are in dispute and the trial court has granted opportunity to the non-petitioner to contest the divorce petition only.

Therefore, the writ petition of the petitioner is dismissed as the judgment relied upon by learned counsel for the petitioner is not applicable to the facts of this case.

(Prakash Tatia), J.

c.p.goyal/-